



MEETING DATE: 9/18/06
ITEM NO: 8

COUNCIL AGENDA REPORT

DATE: September 13, 2006
TO: MAYOR AND TOWN COUNCIL
FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: PPW JOB NO. 05-17 – HIGHWAY 9 SAFETY IMPROVEMENT PROJECT
ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO
APPROVE A COOPERATIVE AGREEMENT BETWEEN THE TOWN OF
LOS GATOS AND THE CITIES OF SARATOGA AND MONTE SERENO
FOR THE HIGHWAY 9 PEDESTRIAN AND BICYCLE SAFETY
IMPROVEMENTS

RECOMMENDATION:

Adopt resolution authorizing the Town Manager to approve a cooperative agreement (Exhibit A) between the Town of Los Gatos and the Cities of Saratoga and Monte Sereno for the Highway 9 Pedestrian and Bicycle Safety Improvements.

BACKGROUND:

The safety improvements on Highway 9 from Saratoga through Monte Sereno to Los Gatos, with an approximate length of 4.4 miles, has \$1,565,000 funded through the Federal Congestion Mitigation and Air Quality (CMAQ) grant program. The local match by the 3 agencies is \$204,000.

The project is a multi-jurisdiction effort to improve safety by developing bike lanes and pedestrian pathways along this route.

Since Highway 9 is under the jurisdiction of Caltrans, the project has to be reviewed and processed by Caltrans based on Caltrans procedures and guidelines.

PREPARED BY:

JOHN E. CURTIS

Director of Parks and Public Works

N:\B&E\COUNCIL REPORTS\05-17.Highway 9.Safety.Improve.9506.Report#2.doc

Reviewed by: _____ Assistant Town Manager OK Town Attorney
_____ Clerk Administrator SP Finance _____ Community Development

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: PPW JOB NO. 05-17 – HIGHWAY 9 SAFETY IMPROVEMENT PROJECT
SEPTEMBER 13, 2006

DISCUSSION:

The Town of Los Gatos is the only agency amongst the three municipalities to have an approved Disadvantage Business Enterprise (DBE) program and projects that use Federal grants must include DBE allocations. Los Gatos has been designated as the lead agency for the project. The scope of project will be refined as preliminary engineering is done and all 3 agencies will participate in this process.

A cooperative agreement has to be signed by Los Gatos, Monte Sereno, and Saratoga to officially outline all the responsibilities and assignments related to each agency during the course of the project, in addition to the project cost distribution. The three agencies will pay their local share for funding the project based on the amount of construction within each agency limits. The City of Saratoga has the largest section of this project within their jurisdiction, followed by Monte Sereno and then Los Gatos.

CONCLUSION:

It is recommended that the Council adopt the attached resolution authorizing the Town Manager to execute an agreement with the Cities of Saratoga and Monte Sereno.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to Sections 15301 (c), 15303(e) and 15304(b) of the State CEQA guidelines.

FISCAL IMPACT:

The Cities of Saratoga and Monte Sereno will pay for all services received in accordance with the payment terms specified in the accompanying agreement. This approach to sharing the cost to each jurisdiction, as contained in the agreement, is to prorate the costs in relation to the cost of the work in each jurisdiction. The initial proration will be based on estimated costs of construction. The Fiscal Year 2006/07 CIP allocates \$51,000.00 as the Town's estimated share of the project total local match of \$204,000.00.

Attachments:

Resolution approving cooperative agreement (Exhibit A) with the Cities of Saratoga and Monte Sereno

RESOLUTION

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
APPROVING A COOPERATIVE AGREEMENT FOR
PPW JOB NO. 05-17 - HIGHWAY 9 SAFETY IMPROVEMENT PROJECT
BETWEEN THE TOWN OF LOS GATOS AND
THE CITIES OF SARATOGA AND MONTE SERENO
FOR THE HIGHWAY 9 PEDESTRIAN AND
BICYCLE SAFETY IMPROVEMENTS**

WHEREAS, the Town of Los Gatos and the Cities of Saratoga and Monte Sereno desires to enter into a cooperative agreement for the Highway 9 Pedestrian and Bicycle Safety project; and

WHEREAS, it is in the public interest for all agencies work together as a reliable, timely, and cost effective means of completing this project; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Council does hereby approve an agreement (Exhibit A) between the Town of Los Gatos and the Cities of Saratoga and Monte Sereno and hereby authorizes the Town Manager to execute said agreement.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 18th of September, 2006, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

COOPERATIVE AGREEMENT FOR HIGHWAY 9 SAFETY IMPROVEMENTS

THIS AGREEMENT, by and among the TOWN OF LOS GATOS, a municipal corporation ("Los Gatos"), the CITY OF SARATOGA, a municipal corporation ("Saratoga"), and the CITY OF MONTE SERENO, a municipal corporation ("Monte Sereno").

RECITALS

- A. Pursuant to Metropolitan Transportation Commission's ("MTC") Regional Bicycle and Pedestrian Program, Los Gatos, Saratoga, and Monte Sereno (the "Parties") have applied for and received approval for a federal Congestion Mitigation and Air Quality ("CMAQ") grant for safety improvements to Highway 9 between Saratoga Avenue and Los Gatos Boulevard as specified in more detail in Attachment A ("the Project").
- B. The Project will take place on lands within the boundaries of each of the Parties.
- C. The Parties anticipate that CMAQ funds will be granted for payment of eighty-eight and one half percent (88.5%) of the Final Project Cost as defined below (the "CMAQ Grant"). The parties have agreed to share the remaining eleven and one half percent (11.5%) of the Final Project Cost (the "Local Share").
- D. The California Department of Transportation ("Caltrans") has authorized the Parties to proceed with the Project Preliminary Design.
- E. The Parties desire to execute this Agreement in order to delineate their respective rights and obligations concerning the administration, financing and construction of the Project.

AGREEMENTS

NOW, THEREFORE, the parties agreed as follows:

- 1. Scope of Project. The Project includes the design, engineering, and construction of the highway improvements specified in Attachment A, by this reference incorporated in full herein. The Project does not include the acquisition of right-of-way. All work shall be performed in accordance with plans and specifications approved by Los Gatos, Saratoga, Monte Sereno, and all local, state and federal agencies having jurisdiction over the Project or whose approval is otherwise required for receipt of CMAQ funds.
- 2. Allocation of Project Costs. The term "Final Project Cost," as used herein means the total of all expenditures relating to the Project, including, but not limited to, engineering, surveys, testing, inspections, topographic maps, geotechnical, soils and environmental surveys and reports, preparation of plans and specifications and other bid documents, publication, printing and advertising of the Project, and the personnel costs of any party pursuant to Section 4 herein below based upon actual time expended in implementing the

Project plus all applicable overhead expenses, and onsite demolition and construction work which shall not exceed the cost estimate in the CMAQ Grant. The Final Project Cost shall be determined upon completion of the Project but in no event shall exceed the amount of the CMAQ Grant without the prior written consent of the Parties.

The term "Estimated Project Cost," as used herein means the estimate of the construction costs determined prior to the opening of bids for the award of the construction contract, plus an agreed additional amount based on an estimation of project administrative costs pursuant to Section 4 herein below.

The parties anticipate that the CMAQ Grant will be obtained from Caltrans by Los Gatos. The Local Share shall be apportioned among each of the parties based on the cost of construction of improvements that will be performed within each jurisdiction stated as a percentage of the Final Project Cost. Payment of the Local Share shall be made in accordance with Section 3 herein below.

Each party is permitted to approve additional improvements within their own jurisdiction beyond the Project as originally approved for the CMAQ Grant, and will be obligated to pay the additional cost(s) associated with those improvements and any additional costs of administration resulting there from.

If, upon the opening of bids for the award of a construction contract, there is a cost overrun of no more than ten percent (10%) of the Estimated Project Cost, the parties shall proceed with the Project in accordance with this Agreement. However, if such bids indicate a cost overrun exceeding ten percent (10%) of the Estimated Project Cost, the Parties will reject all bids and then work to obtain an agreement with Caltrans regarding an alternative project design. If no such agreement is reached by the sixtieth (60th) day after the opening of bids, this Agreement shall automatically terminate Pursuant to Section 9 herein below.

3. Payment of Project Costs. Saratoga and Monte Sereno shall deposit with Los Gatos 25% of their portion of the Local Share based on the Estimated Project Cost within thirty (30) days of execution of this agreement. The remainder of the Local Share shall be deposited by Saratoga and Monte Sereno within 30 days after receipt of an invoice from Los Gatos. Based on the amount of the construction contract(s) awarded for the Project, Los Gatos will adjust the deposits either by reimbursing Saratoga and Monte Sereno their respective portions of the excess deposit, in the event the construction contract(s) are less than the estimate, or by sending an invoice in the event the construction contract(s) exceed the estimate.

Upon completion of the Project, Los Gatos shall furnish to Saratoga and Monte Sereno a detailed accounting of the Final Project Cost. In the event the accounting shows that the amounts deposited by Saratoga or Monte Sereno pursuant to this Section exceeded their respective shares of the Final Project Cost, the excess shall be reimbursed within thirty (30) days after the accounting is completed and approved by all parties. In the event the

accounting shows that the amounts deposited by Saratoga or Monte Sereno are less than their respective shares of the Final Project Cost, Saratoga and Monte Sereno shall pay the deficiency to Los Gatos within thirty (30) days after the date the accounting is sent. Saratoga and Monte Sereno are obligated to pay any deficiency resulting from Project Changes approved pursuant to this Agreement or any deficiency resulting from reasonable additional or unanticipated costs of administration incurred by Los Gatos.

In addition to its own respective share of the Final Project Cost, and in anticipation of reimbursement by Caltrans through the release of the CMAQ Grant, Los Gatos shall periodically advance funds necessary to make payments that are intended hereunder to be paid with the CMAQ Grant, provided, however, that in the event that Los Gatos has not received full reimbursement from Caltrans for any prior advance made, Los Gatos may, at its option, withhold any payment requiring that it advance funds if said payment is not legally required to be made at that time.

4. Project Administration. The Parties agree that the Project will be managed cooperatively by all parties. Representatives of the parties shall work together to accomplish of the Project. However, certain parties shall be responsible for administering certain portions of the Project.

(a) Los Gatos shall be the lead agency for the Project for purposes of administering the CMAQ Grant, preliminary engineering of the Project, which shall include, but not be limited to, the Preliminary Study Report, the Project Report, and compliance with CEQA and NEPA. Los Gatos shall oversee the design and bidding of the Project, shall award the contract for the Project and shall obtain all permits necessary for the Project. Los Gatos shall enter into all contracts necessary to implement the Project provided the contract is approved by the Parties.

(b) Los Gatos shall be responsible for overseeing construction of the Project. Los Gatos shall provide oversight and inspection services for the Project.

The Parties must each approve the plans and specifications for the Project. Los Gatos shall not enter into any contract in excess of \$25,000 or increase any contract by more than \$25,000, for the performance of professional, consulting or construction services without the prior written consent of Saratoga and Monte Sereno.

The Parties shall promptly review and respond to all materials submitted by one of the cities for review and approval in connection with the Project. No approval in connection with the Project shall be unreasonably withheld.

For public meetings, each party is responsible for providing notification of its residents.

5. Right-of-way Acquisitions. No right of way acquisitions are expected to be a part of the Project. If it is determined that the acquisition of any right-of-way is required for the Project, the party having territorial jurisdiction over the property to be acquired shall be responsible for obtaining such right-of-way and conducting any proceedings that may be necessary in connection therewith; provided, however, no contract for legal services shall be awarded and no eminent domain action shall be commenced without the prior approval of the other parties and Caltrans. In the event acquisition of right-of way is necessary to the base project, the City in which the right-of way is located shall pay for the acquisition of the right-of-way. Any delay costs caused by the acquisition shall be shared by the Parties in proportion to their portion of the Local Share. In the event one of the parties desires to acquire right-of-way which is not necessary for the base project, that City shall bear both acquisition and delay costs.
6. Insurance Requirements. The Project Management Team shall include in any contracts awarded for design or construction of the Project a requirement that the consultant and/or contractor, at all times during design and construction and until final acceptance of the work, maintain in full force and effect the following insurance policies:
 - (a) Broad form comprehensive liability insurance having a combined single limit of not less than \$ 2,000,000 per occurrence, naming Los Gatos, Saratoga, Monte Sereno, and their respective officers, officials, boards, commissions, employees and volunteers as insureds there under.
 - (b) For construction contracts, builder's risk insurance covering the replacement cost of the improvements, with a loss payable clause naming Los Gatos, Saratoga and Monte Sereno, as their respective interests may appear.
 - (c) Worker's Compensation insurance as required by state law, together with employer's liability insurance having a coverage limit of not less than \$1,000,000 per accident.
 - (d) For design consultants, professional liability insurance having a limit of not less than \$1,000,000.
7. Bonding Requirements. The Project Management Team shall require the contractor who is awarded the contract for construction of the Project to provide performance and payment bonds in the amount of one hundred and fifty percent (150%) of the contract price.
8. Project Records. The Project Management Team shall keep and maintain a complete copy of all costs and expenditures relating to the Project, together with a complete copy of all plans, specifications, reports, contracts and other documents relating to the Project, and the same shall be available for inspection by the Parties at any time during usual business hours.

9. Termination of Agreement. This Agreement is executed by the parties in reliance on the CMAQ Grant. In the event a grant agreement is not executed between Los Gatos and Caltrans, this Agreement shall automatically terminate and each of the parties shall be released from any further obligation or liability hereunder.

In the event a contract for construction of the Project is not awarded pursuant to Section 2 herein above or for any reason prior to June 30, 2008, this Agreement shall terminate unless extended by mutual consent of all parties hereto.

Upon termination in accordance with the terms of this section, Los Gatos shall refund to Saratoga and Monte Sereno any balance of their respective contributions remaining after deduction of the costs incurred by Los Gatos up to the date of termination and payable by each party under the terms of this Agreement

10. Limitation of Liability. No party to this Agreement shall be responsible or liable to any other party or parties for any act or omission made in good faith in connection with the performance of its duties hereunder, nor shall any party be responsible or liable for any act or omission by any consultant or contractor retained for the performance of any services related to the Project. The parties shall contribute equally towards any loss, liability, expense, claim, costs (including costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from the performance of the Project. This paragraph shall not be construed to exempt any party, including its employees and officers, from its own fraud, willful injury or violation of law whether willful or negligent.
11. Dispute Resolution. The parties shall make a good faith effort to settle any dispute or claim arising under this Agreement. If the parties fail to resolve such disputes or claims, they shall submit them to non-binding mediation in the County of Santa Clara, California, or by mutual agreement in any other location. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all parties, or litigation may be pursued. In the event any of these dispute resolution processes are involved, each party shall bear its own costs and attorneys fees.
12. Jurisdiction and Severability. This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the Superior Court of the County of Santa Clara. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

13. Assignment. Except as provided in Section 4 herein above, no party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect. Monte Sereno and Saratoga acknowledge and accept that a portion of the project management duties of Los Gatos stated in Section 4 herein above will be provided by contractors whose services will be engaged by Los Gatos pursuant to this Agreement.
14. Parties in Interest. This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.
15. Waiver. No failure on the part of any party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
16. Amendment. No modification, waiver, termination, or amendment of this Agreement is effective unless made in writing and signed by all parties.
17. Entire Agreement. This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for Authority and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year last written below.

CITY OF SARATOGA

APPROVED AS TO FORM:

BY _____
SARATOGA CITY ATTORNEY

ATTEST: _____
CITY CLERK

TOWN OF LOS GATOS

APPROVED AS TO FORM:

BY _____
LOS GATOS TOWN ATTORNEY

ATTEST: _____
CLERK ADMINISTRATOR

CITY OF MONTE SERENO

APPROVED AS TO FORM:

BY _____
MONTE SERENO CITY ATTORNEY

ATTEST: _____
CITY CLERK